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10/625,138	07/23/2003	Gerhard N. Schrauzer	03-SCH/101	8281

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EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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12/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/625,138	Applicant(s) SCHRAUZER, GERHARD N.	
	Examiner Helen F. Pratt	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21 and 38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21, and 38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 21, 38 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. Steps as to how the aqueous suspension of claim 21 is treated with carbon dioxide and kept from being released while being processed into tablet form, critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). No process step is seen for keeping the carbon dioxide from evaporating while the suspension is processed into tablet form.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 38 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 38 is indefinite in the use of the phrase "including". A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP §

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Claims 21, 36, 38 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. Steps as to how the aqueous suspension of claim 21 is treated with carbon dioxide and kept from being released while being processed into tablet form, critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). No process step is seen for keeping the carbon dioxide from evaporating while the suspension is processed into tablet form.

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2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 38 recites the broad recitation "liquid beverage", and the claim also recites "including fruit or vegetable juice" which is the narrower statement of the range/limitation.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

Claims 21 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyamoto (JP 59022583) in view of De Ment (2,637,536) and Santhanan (4,546,612).

Miyamoto discloses a process of making a nutritional composition by burning tree material to make ash and treating the ash with an organic acid (acetic) in amounts 6-7 times that of the ash to give a stock solution which is evaporated to dryness (powder) (abstract). Claim 21 differs from the process in further treating the reacted plant ash to make a consumable mineral supplement. However, Miyamoto discloses that fruits and vegetables can be dipped into the mineral composition, which means that the mineral mixture is suitable for human consumption. In addition, as the method has been shown, it is as consumable as that of the claims. No differences have been shown to make it not fit for human consumption. Therefore, it would have been obvious to make a mineral composition as disclosed by Miyamoto.

Claim 21 further requires the cited processing steps. The reference discloses that the extract is filtered, evaporated to a powder (abstract). Nothing new is seen in the heating and dilution, which are common processing steps. It is noted in the specification, as on page 10 and on that not all of the claimed steps are required. It is seen that not all of the steps are critical, and it would have been within the skill of the ordinary worker to use known processing steps such as homogenization and pasteurization when required. Therefore, it would have been obvious to use known processing steps as shown by the reference.

Claim 21 further requires selectively varying the plant material depending upon the analyzed mineral content of said plant material. However, this is seen as being within the skill of the ordinary worker, to use plants, which will provide particular mineral contents.

Claim 21 further requires treating the aqueous suspension with carbon dioxide and processing it into tablet form, so that it will produce carbon dioxide when added to a beverage. Santhanam discloses that it is known to treat finely divided inorganic matter with liquid carbon dioxide to form a slurry. The treated material is separated from the slurry to produce a free-flowing particulate. The finely divided powders can be used in medicinal and cosmetic products (col. 1, lines 5-12, abstract and drawing). De Ment discloses that it is known to add solid carbon dioxide to material in order to disperse it (col. 6, lines 50-60). The material and CO₂ can be in the form of tablets (col. 6, lines 41-50, col. 2, lines 42-61). Therefore, it would have been obvious to treat a suspension of solids with CO₂ and to further make the solid type tablet, which will release CO₂ in water.

Claim 38 further requires the mineral supplement is added in the form of a tablet to fruit or vegetable juice. DeMent teaches that effervescent tablets can be added to water as above. Therefore, as it is known to add effervescent materials to water, it would have been obvious to add them to other water containing foods for their known function of providing minerals.

ARGUMENTS

Applicant's arguments filed 10-17-07 have been fully considered but they are not persuasive. Applicant argues that there does not need to be basis in the specification for treating suspensions with carbon dioxide and then processing into tablet form, but cites no court decision or anything from the MPEP. If applicant is relying on this step for patentability, it must be in the specification or one could continually add steps to a

process and say they were conventional. If the step is conventional and not required, the step should be cancelled.

Applicant states that the process of treating the suspension into carbon dioxide releasing tablets is disclosed in paragraphs 0025 and 0032. No support for the addition of carbon dioxide limitations was found in these claims.

Applicant argues that the reference to Miyamoto does not disclose reacting the plant ash with carbon dioxide. However, the secondary references do show this step, which as applicant has said is conventional and therefore, cannot be the basis for patentability.

It would have been obvious to make a composition as claimed as the process has been shown in combination. Applicant's claims are very broad and read on the reference as to using any type of plant material.

Applicant argues that DeMent and Santhanan are not relevant art. However, Santhanan discloses that the invention is to "medicinal" products (col. 1, lines 5-12). Medicines have to be edible if taken by mouth. DeMent also, discloses adding CO₂ to liquids. If the reference discloses treating liquids with CO₂, it is not seen why it could not also be applied to any liquid because the outcome is the same. The reference even discloses coating a tablet with sugar, gelatin or starch, all edible materials (col. 6, 24-33).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 12-5-07


HELEN PRATT
PRIMARY EXAMINER